IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.2686 OF 2006

Satyanarayan R. Dubey & Ors. ...Petitioners.

Versus

The State of Maharashtra & Ors. ...Respondents.

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Mr. N. G. Thakkar, Senior Advocate with Ms.Soumya Srikrishna i/b. Mahesh Jani & Co. for the Petitioners.
Mr. Abhijit Wagh with Ms. Prachi P. Rane i/b. Utangale & Co. for Respondent No.2.
Mr. Shekhar Ingawale, AGP for Respondent Nos.1, 3 and 4.
Mr. S.G. Surana for Respondent No. 5.

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CORAM : DR. D.Y. CHANDRACHUD, J.

December 13, 2006.

ORAL JUDGMENT :

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The Petitioners have questioned the legality and validity of

acquisition proceedings under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, and the final notification dated 11th May 2006 issued by the State Government in exercise of the power conferred by Section 14. The State Government had decided to acquire the land for the following public purposes, namely :

> "(a) Laying of water mains Sewer and storm water,
>
> (b) Provision of urinals, latrines, community baths and taps;
>
> (c) Widening, realigning or paving of existing roads, lanes and pathways and constructing new roads, lanes and pathways;
>
> (d) Providing street lights;
>
> (e) Cutting, filling, leveling and landscaping the areas;
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> (f) Partial developments of the area with a view to providing land for unremunerative purpose such as parks, playgrounds, welfare and community centre, school, dispensaries, hospitals, police station, fire station and other amenities run on a non profit basis;
>
> (g) Demolition of obstruction or dilapidated buildings or portion of buildings;
>
> (h) Redevelopment of slums existing on the land."

The Petitioners claim to assert an interest in the property on the basis of adverse possession.

3. The acquisition proceedings which have been questioned by the Petitioners were the subject matter of an earlier challenge before this Court in Writ Petition (Lodging) 1477 of 2006 (S. Ramkrishna Nayak vs. State of Maharashtra). The petition came to be dismissed by an order dated 13th September 2006. The order passed by this Court was confirmed in appeal (Appeal 793 of 2006) by a Division Bench of this Court consisting of Hon'ble Mr.Justice R.M. Lodha and Hon'ble Mr.Justice S.A. Bobde on 15th November 2006. This Court inter alia held that upon the vesting of the land in the acquiring body, the remedy of the land owner was to espouse the claim for compensation and in view of the law laid down by the Supreme Court, the exercise of the jurisdiction under Article 226 of the Constitution was not warranted. The order of the Court reads thus:

> "The consequence of a notification under Section 14(1) is provided by sub-section (2). Upon the publication of the notification in the Official Gazette, the land vests absolutely in the State Government free from all encumbrances.

> Once vesting is complete, the remedy of the land owner is to espouse his claim for compensation in the manner provided by the statutory provisions governing the acquisition of land. In view of the judgment of the Supreme Court in **Municipal Council, Ahmednagar vs. Shah Hyder Beig**,[1] the High court in the exercise of its jurisdiction under Article 226 of the Constitution would not be justified in exercising its extraordinary jurisdiction once vesting is complete. That principle which has been applied in the context of acquisition under the Land Acquisition Act, 1894, read with Section 126 of the Maharashtra Regional and Town Planning Act, 1966, must be applied as well to an acquisition under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the acquisition being for a public purpose."

The Court also negatived the submission that the acquisition was not for carrying out "works of improvement" in relation to a slum area as defined in Section 2(i) of the Act.

4. The Petitioners before this Court had sought to intervene in the earlier proceedings. The application for intervention (Chamber Summons 229 of 2006) was disposed of granting liberty to the Petitioners to adopt such proceedings as were available in law for ventilating their grievances in regard to the acquisition. The Petitioners have thereupon instituted the present proceedings to

1 2000(3) Mh L.J.1

impugn the acquisition.

5. Three submissions have been urged on behalf of the Petitioners: (i) The Petitioners were not granted an opportunity of being heard or of a personal hearing; (ii) The description of the Survey numbers that have been acquired in the final notification differs in certain respects from the survey numbers that were the subject matter of the notice to show cause; and (iii) A smaller property admeasuring 274.80 sq.mtrs has been acquired despite the fact that a declaration of a slum in respect thereof was set aside by the Slum Areas (Improvement, Clearance and Redevelopment) Tribunal on 8th October 2004.

6. Before taking up the submissions, it would be necessary to note that the Petitioners claim interest through one Rajaram Mohan Dubey who, according to them, came into possession of property bearing Survey No.18, Plot -1, admeasuring 10 acres and 24 gunthas in the year 1914. According to the Petitioners, the property originally belonged to one Ramvallabh Haridayal and Kanhyalal Badridas, who

had leased out the property to the predecessors in interest of the Petitioners on an annual rent of Rs.300/-. The owners expired in 1924 and 1930 and according to the Petitioners, after 1931 no rent was paid by their predecessors in interest. The Petitioners have relied upon the revenue extracts, including a 7x12 extract and Form 6 in which the name of Rajaram Mohan Dubey is shown as Kul or tenant. According to the Petitioners, the subsequent owners of the property Sujir Pundlik Nayak and Bhujang Rao instituted Suit 454 of 1970 on the Original Side of this Court for possession claiming that the Petitioners' predecessors were trespassers. The suit was disposed of on 30th October 1987 as having abated. In the petition, the Petitioners have averred that they are in the process of taking necessary steps to file a substantive suit for a declaration of their ownership. Thus, it would appear from the proceedings that while on the one hand, the revenue entries upon which the Petitioners rely reflect the name of their predecessor as protected tenant, the Petitioners themselves claim an interest in the land which has been acquired on the basis of adverse possession.

7. The submissions that have been urged on behalf of the Petitioners shall now be taken up.

8. The first submission which is to the effect that there was a breach of the principles of natural justice, is lacking in merit. In the petition, the Petitioners claim interest on the strength of a judgment and order dated 30th October 1987 of this Court in Suit 454 of 1970 by which the suit was held to have abated upon the death of one of the Plaintiffs. The record would show that it was on 22nd October 2005 that the Petitioners informed the Additional Collector (Encroachment and Removal) of the judgment of this Court in the suit. The aforesaid communication which was submitted on behalf of the Petitioners, is also material because it is clear therefrom that the Petitioners responded to a public notice inserted in the newspaper in respect of the notification issued by the Competent Authority proposing to acquire the land. The Petitioners were therefore, aware of the proposed acquisition. By submitting a representation on 22nd October 2005, the Petitioners participated in the enquiry that was held prior to the acquisition. Significantly, the letter addressed by the Petitioners

does not question the acquisition on the ground that there was no public purpose underlying the acquisition. The claim of the Petitioners was that they were interested in developing the land under the Slum Rehabilitation Scheme. The subsequent letter addressed by the Petitioners on 16th November 2005 contained a request that the land should not be transferred to the proposed Co-operative Housing Society of slum dwellers that has been formed and that in the alternative, the land which is acquired by the Government should be handed over to the Petitioners for development. In neither of the two letters did the Petitioners seek an opportunity of a personal hearing. The report of the Collector was submitted to the State Government on 3rd January 2006 (the reference to the date of the Report appears from the statement of facts contained in para 2 of the earlier order of this Court dated 13th September 2006) and it is only thereafter that the Petitioners sought a personal hearing. A personal hearing is not a necessary component of the principles of natural justice, but that apart, neither has any prejudice been demonstrated before the Court, nor can a submission that there was a breach of the principles of natural justice be accepted. The Petitioners duly submitted a

representation. The Petitioners did not dispute therein the existence of an underlying public purpose. There is no merit in the first submission.

9. The next submission is that a portion of the land admeasuring 274 sq.mtrs. has been deleted from the declaration of a slum by an order dated 8th October 2004 passed by the Slum Areas (Improvement, Clearance and Redevelopment) Tribunal, in Appeal 15 of 2004. From the record, it would appear that the First Petitioner had filed an appeal sometime in the year 2004 to challenge the declaration of a slum which was published in the Government Gazette on 13th October 1977 in relation to CTS 3/244 to 3/291 of Survey No.18. The order of the Slum Tribunal deleting a portion of the land from the declaration of a slum does not affect the legitimacy of the acquisition proceedings. In the affidavit in reply filed in these proceedings by the Resident Deputy Collector, reliance has been placed on Section 14(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, which is to the following effect:

> "Where on any representation from the Competent Authority it appears to the State Government that, in order to enable the Authority to execute any work of improvement in relation to any slum area or any building in such area or to redevelop any clearance area, it is necessary that any land within adjoining or surrounded by any such area should be acquired, the State Government may acquire the land by publishing in the Official Gazette, a notice to the effect that the State Government has decided to acquire the land in pursuance of this Section." (emphasis supplied).

10. Under Section 14(1), the State Government is empowered to acquire land within, adjoining or surrounded by a slum area in order to institute any work of improvement. The Legislature has, therefore, considered it fit and proper to permit acquisition proceedings not merely in respect of an area which is declared as a slum area, but area adjoining and surrounded by the area which is declared as a slum. The reason is that in order to effectuate the object of acquisition it may become necessary to acquire adjoining and surrounding areas as well in order to facilitate the underlying public purpose. In view of the express provisions of Section 14(1), the challenge on the ground that a portion of the land has been deleted from the declaration of a slum cannot be accepted. That apart, it must be noted that the aforesaid ground was not raised by the

Petitioners either in the first representation dated 22nd October 2005 or in the subsequent representation dated 16th November 2005. It was only after the Collector submitted his report on 3rd January 2006 that in a letter dated 29th March 2006 the said ground was taken. But, be that as it may, even on merits the submission cannot be accepted for the reasons already indicated.

11. The third submission is that there was a variance between the land which was notified for acquisition in the notice under Section 14(1) and the land which has been finally acquired under the notification dated 11th May 2006. The preliminary notice inter alia adverted to TPS No.3/22A/269 and 3/283 to 301. The final notice inter alia covered City Survey No.3/223 to 269 and 3/283 to 301. The Resident Deputy Collector in his affidavit has stated that there was an inadvertent typing mistake in the preliminary notification. What is significant, however, is that the total extent of the land that was being acquired was adverted to in the preliminary notice dated 16th July 2005 as well as in the public notice dated 30th July 2005. A plan showing the extent of the land that was the subject of acquisition

was available for inspection at the office of the Additional Collector (Encroachment/ Removal). The Petitioners have themselves annexed a copy of the plan reflecting the land proposed to be acquired. Eventually, the final notification provided for the acquisition of an area admeasuring 5820.61 sq.mtrs. because in the meantime, the Municipal Corporation had already acquired a portion of the land falling under the D.P. Road as a result thereof, 78 slum dwellers had already been shifted. Accordingly, an order was passed by the Additional Collector on 16th May 2006 clarifying that out of 240 slum dwellers who were found eligible under the slum scheme 78 would have to be excluded, leaving a balance of 162 slum dwellers. These facts have already been adverted to in the judgment of this Court dated 13th September 2006 in the previous proceedings. The Petitioners were, therefore, at all material times, aware of the extent of acquisition and the reply submitted by them to the public notice demonstrates that no prejudice was caused by the rectification of the error that had crept into the preliminary notification.

12. The Petitioners would be at liberty to submit their claim for

compensation in accordance with law. The land has vested in the State upon the issuance of a notification under Section 14(1). The remedy of the land owner in such a situation would lie in a claim for compensation. From the affidavit in reply filed in these proceedings on behalf of the Fifth Respondent which is a society formed by the slum dwellers, it emerges that the Slum Redevelopment Scheme has been sanctioned by the issuance of a letter of intent on 26th July 2006. A Co-operative Housing Society has been registered and 240 slum dwellers were initially found to be eligible to participate in the Slum Redevelopment Scheme. The exercise of the jurisdiction under Article 226 of the Constitution is not warranted. The Court would be justified in declining to interfere with the acquisition proceedings once vesting is complete. That was also one of the reasons on the basis of which this Court in its order sated 13th September 2006 declined to interfere, relying upon the judgment of the Supreme Court in **Municipal Council, Ahmednagar vs. Shah Hyder Beig** (supra). The challenge to the acquisition proceedings must therefore fail.

13. However, on behalf of the Petitioners it has been submitted

that signatures of some of the slum dwellers have been forged and the list of eligible persons includes some persons who had already been rehabilitated and granted alternate accommodation elsewhere. In para 11 of the affidavit in rejoinder dated 28th November 2006, it has been stated that one of the slum dwellers, Jaisukhlal Fulshankar Vyas has expired on 2nd March 1998. The grounds that have been raised in the writ proceedings in regard to the eligibility of the slum dwellers raise disputed questions of fact which cannot be adjudicated upon by this Court. At the same time, it would be necessary to direct the Slum Rehabilitation Authority to scrutinise the information that has been placed on the record by the Petitioners with a view to consider as to whether there is any merit in the factual grievance urged on behalf of the Petitioners in that regard. The Petitioners would be at liberty to submit a comprehensive representation before the Slum Rehabilitation Authority within a period of four weeks from today and in the event that a representation is submitted, the Competent Authority shall take a decision thereon after considering the reply, if any, that may be submitted on behalf of the Fifth Respondent. A copy of the representation shall also be furnished to the Fifth Respondent.

In the event that the Competent Authority comes to the conclusion that the proposal submitted by the Fifth Respondent is not supported by an adequate number of slum dwellers (70 per cent as required under the law), it would be open to the Authority to consider any other proposal including that submitted by the Petitioners for development.

14. From the final notification dated 11th May 2006, it is clear that Survey Nos.3/270 to 282 are not the subject matter of acquisition. The aforesaid position apart from being evident from the notification itself has fairly not been disputed by the Learned AGP on instructions. In the circumstances it would be necessary that the portion which has not been acquired is demarcated by the Additional Collector and the Competent Authority who shall be at liberty to take the assistance of the DILR for that purpose. The aforesaid exercise shall be carried out within a period of eight weeks from today at the site.

15. Rule is made absolute to the extent mentioned above. There shall be no order as to costs.

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